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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 POWAY UNIFIED SCHOOL DISTRICT,
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13 vs. Plaintiff,
14 LINDSEY STEWART,
15 Defendant.

CASE NO. 07CV1060 WQH (POR)
ORDER DENYING DEFENDANT'S
MOTION TO PROCEED IN FORMA
PAUPERIS ON APPEAL

16 HAYES, Judge:

17 Pending before the Court is Defendant's motion to proceed in forma pauperis on appeal. (Doc.
18 # 21).

19 **DISCUSSION & ORDER**

20 All parties appealing a civil action, suit, or proceeding, must pay a filing fee to the district
21 court. *See* 28 U.S.C. § 1917(a); FED. R. APP. P. 3. An action may proceed despite a party's failure
22 to pay only if the party is granted leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915(a).
23 *See Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999); *Smith v. Johnson*, 109 F.2d 152, 154 (9th
24 Cir. 1940). "An appeal may not be taken in forma pauperis if the trial court certifies in writing that
25 it is not taken in good faith." 28 U.S.C. § 1915(a)(3).

26 "To proceed in forma pauperis is a privilege not a right." *Smart v. Heinze*, 347 F.2d 114, 116
27 (9th Cir. 1965). "It is the duty of the District Court to examine any application for leave to proceed
28 in forma pauperis to determine whether the proposed proceeding has merit and if it appears that the


1 proceeding is without merit, the court is bound to deny a motion seeking leave to proceed in forma
2 pauperis. *Id*; see also *Jefferson v. United States*, 277 F.2d 723, 724-725 (9th Cir. 1960).

3 In her accompanying affidavit, Defendant states that she is not employed, and has not been
4 employed since June of 2005. Defendant currently receives \$440.00 every two weeks in worker's
5 compensation benefits, and she owns outright a 2002 Buick LeSabre. Defendant has \$11.00 in a
6 savings account, however, Defendant indicates that she owns no other assets. Defendant indicates that
7 she has two dependents, but does indicate how much money she contributes to support them. Finally,
8 Defendant indicates that she does not have any debts or other financial obligations.

9 After considering Defendant's motion and the accompanying affidavit, the Court determines
10 that Defendant can afford to pay the filing costs associated with this appeal pursuant to 28 U.S.C. §
11 1915(a). The Court therefore **DENIES** Defendant's motion to proceed in forma pauperis. (Doc. #
12 21).

13 **IT IS SO ORDERED.**

14 DATED: November 14, 2007

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16 **WILLIAM Q. HAYES**
17 United States District Judge
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